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DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
LIVCO WATER COMPANY FOR AN )  
EXTENSION OF ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY FOR THE )  
PROVISION OF WATER SERVICE IN )  
PORTIONS OF APACHE COUNTY, )  
ARIZONA, )

DOCKET NO. W-02121A-06-0316

Arizona Corporation Commission

**DOCKETED**

JAN 29 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF )  
LIVCO SEWER COMPANY FOR AN )  
EXTENSION OF ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY FOR THE )  
PROVISION OF WASTEWATER SERVICE IN )  
PORTIONS OF APACHE COUNTY, )  
ARIZONA, )

DOCKET NO. SW-02563A-06-0316

**MOTION FOR PARTIAL  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY  
AND OBJECTION TO STAFF'S  
RECOMMENDATION TO CLOSE  
DOCKET**

Livco Water Company and Livco Sewer Company (individually referred to as "LWC" and, "LSC" respectively, and collectively referred to as "LIVCO" or the "Company") hereby submit their request for the issuance for a Certificate of Convenience and Necessity for portions of the areas subject to the Order Preliminary, and their Objection to the Staff's Memo (the "Memo") issued January 28, 2009, recommending closure of the docket.

1. The Commission issued Decision No. 69258 dated January 19, 2007 in the subject consolidated Docket (the "Decision").

2. That Decision granted an Order Preliminary and adopted the Staff's recommended approval of the Application with several Conditions, including Condition 2 which required the

1 Company to file as a compliance item Letters of Adequate Water Supply ("LAWS") from the  
2 Arizona Department of Water Resources ("ADWR") for Units One, Three and 33 as well as  
3 Concho West Subdivision.

4 2. Exhibit A-5 in the proceeding was the Companies' Objection to the Staff Report and  
5 included a Data Response dated July 6, 2006. Attached thereto was the ADWR LAWS dated  
6 January 15, 1985 declaring the water supply to Concho Valley Unit 33 as "adequate". A copy of  
7 that LAWS is attached hereto as **Exhibit 1**. The Company has as recently as January 27, 2009  
8 requested an extension of time for filing the LAWS for Units 1, 3, and Concho West.

9 3. Condition 2 and 3, as adopted in the Decision, required the filing of an Apache County  
10 Franchise. That Franchise was docketed on July 30, 2008, and a copy is attached as **Exhibit 2**.

11 4. Therefore, as acknowledged by the Staff Memo, the only outstanding Compliance  
12 Items for LWC and LSC full compliance are the LAWS for Units 1, 3, and Concho West.

13 5. The Company was awaiting the issuance of the ADWR LAWS before requesting the  
14 granting of the full CC&N to LWC and LSC, and requested the above reference Extension to  
15 facilitate the CC&N request. However, if the Staff is of the opinion they can not grant the  
16 requested extension, the Commission should, at a minimum, grant the full CC&N to LSC all  
17 requested areas, and the CC&N to LWC for Concho West Unit 33.

18 6. The Company is of the opinion that the Staff Memo is incorrect in that it does not  
19 address issuance of the CC&N the areas for which the Companies have fully complied with the  
20 Order Preliminary prior to the dates set forth in that Order Preliminary.

21 WHEREFORE, LIVCO respectfully requests that the Staff modify the Staff Memo to  
22 recommend the issuance of the full CC&N to LSC, the CC&N for Concho West to LWC, and  
23 grant the requested extension of time for filing the LAWS for the Units 1, 3 and Concho West.

1  
2 Respectfully submitted this 29<sup>th</sup> day of January, 2009.

3 SALLQUIST, DRUMMOND & O'CONNOR, P.C.

4 By: 

Richard L. Sallquist

5 SALLQUIST, DRUMMOND & O'CONNOR P.C.

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Attorneys for Livco Water Company

and Livco Sewer Company

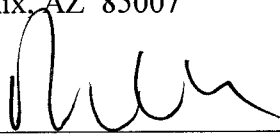
8  
9 The original and ten copies of  
the foregoing were filed this 29<sup>th</sup>  
day of January, 2006:

10 Docket Control  
11 Arizona Corporation Commission  
1200 W. Washington St.  
12 Phoenix, AZ 85007

13 Copies of the foregoing were mailed  
this 29<sup>th</sup> day of January, 2009 to:

14 Hearing Division  
15 Arizona Corporation Commission  
1200 W. Washington St.  
16 Phoenix, AZ 85007

17 Legal Division  
18 Arizona Corporation Commission  
1200 W. Washington St.  
19 Phoenix, AZ 85007

20 Kimberly Battista  
21 Utilities Division  
Arizona Corporation Commission  
1200 W. Washington St.  
22 Phoenix, AZ 85007  
23 

State of Arizona

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor  
WESLEY E. STEINER, Director

January 15, 1985

Mr. Roy Tanney  
Chief of Subdivisions  
Real Estate Department  
2005 North Central Avenue, 7th Floor  
Phoenix, Arizona 85004

Re: Concho Valley Unit 33,  
Apache County

Dear Mr. Tanney:

Pursuant to A.R.S. 45-108, Shreeve & Associates, Inc. has provided the Department of Water Resources with information on the water supply for the referenced subdivision in Section 33, T12N, R26E, G&S R B&M.

Water for domestic use will be provided to each of the 82 lots in the subdivision by Livco Water Company from a well within its franchised area.

Adequacy of the water supply was reviewed by the Department with regard to quantity, quality and dependability. The subdivision is located about 25 miles northeast of the City of Show Low. There are two aquifers underlying the property. The subdivision's proposed supply will initially be obtained from the upper volcanic aquifer. The depth to water in the existing supply well is about 50 feet below land surface. This well is capable of producing sufficient quantities of acceptable quality water for the proposed use. The lower aquifer in the area is the regional Coconino Sandstone Formation, and this aquifer could provide additional water supplies if necessary. The depth to water in the Coconino aquifer is about 550 feet below land surface and there has been no noticeable decline of the water level over the past several years. Available information indicates the area receives substantial amounts of annual recharge which should be sufficient to supply the subdivision's projected demands for a sufficiently long period of time. The Department of Water

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

Flood Warning Office 255-1548, Water Rights Administration 255-1581, Hydrology 255-1585.

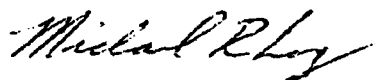
Exhibit 1

Mr. Roy Tanney  
January 15, 1985  
Page Two

Resources, therefore, finds the water supply to be adequate to meet the subdivision's projected needs. Any change to the subdivision or its water supply plans may invalidate this decision.

This letter constitutes the Department's report on the subdivision water supply and is being forwarded to your office as required by A.R.S. 45-108. This law requires the developer to hold the recordation of the above subdivision's plats until receipt of the Department's report on the subdivision's water supply. By copy of this report, the Apache County Recorder is being officially notified of the developer's compliance with the law.

Sincerely,



Michael R. Long  
Chief Hydrologist

dg

cc: Henry H. Leigh,  
Lake Investment Company  
Shreeve & Associates, Inc.  
Livco Water Company  
Mary B. Chavez,  
Apache County Recorder  
Monty Stansbury,  
Apache County Planning/Zoning  
Wesley Shonerd,  
Arizona Department of Health Services

DAVID A. BROWN  
CHAIRMAN OF THE BOARD  
DISTRICT III  
P.O. BOX 428 ST. JOHNS, AZ 85936

TOM M. WHITE, JR.  
VICE CHAIR OF THE BOARD  
DISTRICT II  
P.O. BOX 994 GANADO, AZ 86505

JIM CLAW  
MEMBER OF THE BOARD  
DISTRICT I  
P.O. BOX 1952 CHINLE, AZ 86503

**BOARD OF SUPERVISORS  
OF APACHE COUNTY**

P.O. BOX 428  
ST. JOHNS, ARIZONA 85936

TELEPHONE: (928) 337-7503  
FACSIMILE: (928) 337-2003



DELWIN P. WENGERT, MANAGER-CLERK  
ST. JOHNS, AZ 85936

**RESOLUTION NO. 2007-11  
A RESOLUTION OF THE BOARD OF SUPERVISORS OF  
APACHE COUNTY, GRANTING A NON-EXCLUSIVE  
FRANCHISE EXTENSION FOR PUBLIC UTILITY  
PURPOSES PURSUANT TO A.R.S. §40-283 TO  
LIVCO WATER COMPANY AND LIVCO SEWER  
COMPANY.**

BE IT RESOLVED by the Board of Supervisors of Apache County as follows:

Section 1. There is hereby granted to Rick Kautz, Livco Water Company and Livco Sewer Company, an Arizona public service corporation, public utility or political subdivision, its successors and assigns ("Franchisee"), the right, privilege and non-exclusive franchise extension to construct, install, maintain and operate on, over, along, across and under the present and future public streets, avenues, alleys, highways, bridges, roads and other public ways in the unincorporated areas of Apache County under the jurisdiction of the Board of Supervisors, all lines, pipes, cables and other facilities customarily associated with the Applicant's business of supplying water service to its customers located within the legal description of:

*See Exhibit "A", attached hereto and incorporated herein by reference.*

Section 2. All facilities to be constructed, repaired, maintained or installed pursuant to this Franchise shall be constructed, installed and maintained in accordance with Apache County standards, specifications, franchise fees permit and insurance requirements for work within the public rights of way, as administered by the Apache County Engineering Department

Section 3. If any facility constructed, repaired, maintained or installed pursuant to this Franchise is found to interfere unduly with vehicular or pedestrian traffic, Franchisee shall, at its own expense and within a reasonable time after notice thereof by the Apache County Engineering Department, remove or relocate the facility so as to eliminate the undue interference.

Section 4. Franchisee shall bear all expenses, including damage and compensation, for any alteration of the direction, surface, grade or alignment of a public road or other public way, made for the purpose of this Franchise.

Exhibit 2

Section 5. This Franchise is subject at all times to such regulations and limitations on the use of the public roads and other public ways as the Board of Supervisors may deem best for the public safety and welfare from time to time.

Section 6. If the Board of Supervisors takes action to dispose of an unnecessary public roadway pursuant to A.R.S. § 28-7201 et seq., the Board shall include in the instrument of disposal specific and appropriate language to preserve Franchisee's rights of use as they existed before the disposal.

Section 7. The County will provide Franchisee with the construction/repair standards in writing and advise franchisee when there are changes.

Section 8. The County will notify Franchisee before roadwork such as chipsealing or paving is done in Concho Valley or Old Concho to mark valve locations and allow representation at any pre-construction planning meetings for construction or roadwork that may affect Livco's plant.

Section 9. If Franchisee's exercise of its rights under this Franchise causes disturbance of pavement, sidewalk, driveway or other improved surface, or planting or other ground cover, Franchisee shall, at its expense, promptly restore the surface to its prior condition in a manner satisfactory to the Apache County Engineering Department.

Section 10. If Franchisee's facilities within any public road or other public way must be permanently or temporarily relocated due to the relocation, realignment or improvement of the road or way by Apache County or another governmental entity (including a County Improvement District), Franchisee shall cooperate fully and shall bear the expense of relocating its facilities; provided, however, that if Franchisee's facilities were originally installed before the road or way was granted to Apache County or the public, Apache County (or the governmental entity undertaking the relocation, realignment or improvement) shall bear the expense of relocating Franchisee's facilities.

Section 11. To the full extent permitted by law, Franchisee shall indemnify, defend and hold harmless Apache County and its officials, employees and agents from and against any loss, claim, expense or liability arising out of Franchisee's exercise of its rights under this Franchise.

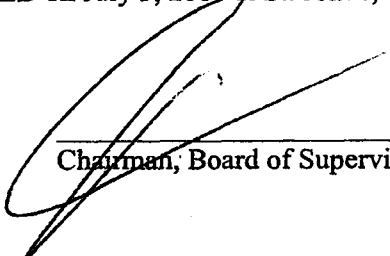
Section 12. This Franchise shall continue and exist for a period of 25 years from the date hereof.

Section 13. The right, privilege and franchise granted herein shall be binding upon and inure to the benefit of Franchisee, its successors and assigns; provided, however, that no transfer or assignment shall be made without the prior written approval of the Board of Supervisors.

Section 14. Any and all franchisees previously granted to Franchisee by the Board of Supervisors, and any and all resolutions and parts thereof that may conflict with the terms hereof, are hereby repealed.

Section 15. If any provision of this Franchise is adjudged to be invalid or unenforceable in whole or part, the remaining provisions shall not be affected.

**PASSED AND ADOPTED** on July 3, 2007 at St. Johns, Apache County, Arizona.

  
\_\_\_\_\_  
Chairman, Board of Supervisors

Attest:



\_\_\_\_\_  
Clerk of the Board



**REQUESTED FRANCHISE AREA**

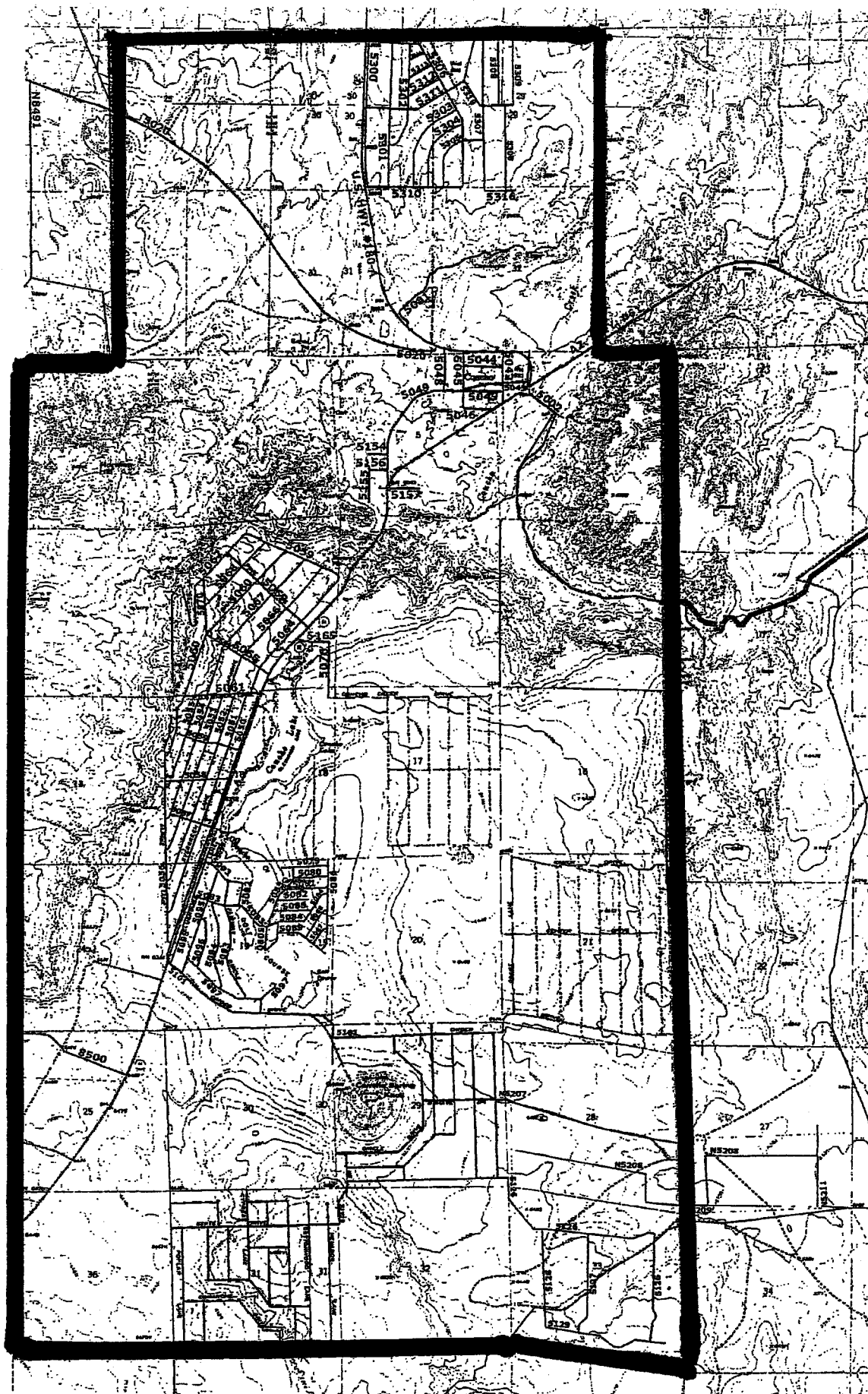
Sections 25 and 36, Township 13 North, Range 25 East, G&SRB&M, Apache County Arizona, and

Sections 29, 30, 31, and 32, , Township 13 North, Range 26 East, G&SRB&M, Apache County Arizona

Sections 1, 12, 13, 24, 25, and 36, Township 12 North, Range 25 East, G&SRB&M, Apache County Arizona

Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, Township 12 North, Range 26 East, G&SRB&M, Apache County Arizona

**ATTACHMENT C**



ATTACHMENT D

## EXHIBIT A

LIVCO WATER COMPANY AND LIVCO SEWER COMPANY  
DOCKET NOS. W-02121A-06-0316 AND SW-02563A-06-0316  
AMENDED LEGAL DESCRIPTION

REQUESTED WATER EXPANSION AREA**Parcel 1**

Concho West Shore Subdivision – A portion of Sections 7 and 18, Township 12 North, Range 26 East, Gila and Salt River Base and Meridian, Apache County, Arizona, more particularly described as follows:

Commencing at a point marking the Northeast corner of said Section 18;

THENCE South 86° 00' 07" West along the common boundary between Sections 7 and 18, a distance of 1,874.18 feet to the TRUE POINT OF BEGINNING;

THENCE South 00° 50' 31" West, a distance of 1,378.86 feet to a point on the South boundary of the Northwest Quarter of the Northeast Quarter of Section 18, said point lying South 86° 24' 11" West, a distance of 426.43 feet from the Northeast 1/16 Section corner;

THENCE South 86° 24' 11" West along said 1/16 Section line, a distance of 898.76 feet to a point on the Easterly right-of-way boundary of State Highway 61;

THENCE North 18° 33' 42" East along the highway right-of-way, a distance of 1,437.83 feet to a point of curvature;

THENCE Northerly along the right-of-way boundary and along a curve being concave to the East, having a radius of 3,745 feet, through a central angle of 05° 14' 54", a distance of 343.05 feet;

THENCE South 69° 00' 28" East, a distance of 361.78 feet;

THENCE South 00° 50' 31" West, a distance of 118.16 feet to the TRUE POINT OF BEGINNING.

Containing 23.04 acres, more or less

Subject to any existing easements or restrictions

**Parcel 2**

All of Section 7 except Parcel 1 and those areas previously certificated to the Company

**Parcel 3**

All of Section 29 except those areas previously certificated to the Company

**Parcel 4**

All of Section 33

All located in Township 12 North, Range 26 East, G&SRB&M, Apache County, Arizona

DOCKET NOS. W-02121A-06-0316 AND SW-02563A-06-0316  
AMENDED LEGAL DESCRIPTION

REQUESTED SEWER EXPANSION AREA

**Parcel 1**

Concho West Shore Subdivision – A portion of Sections 7 and 18, Township 12 North, Range 26 East, Gila and Salt River Base and Meridian, Apache County, Arizona, more particularly described as follows:

Commencing at a point marking the Northeast corner of said Section 18;  
THENCE South 86° 00' 07" West along the common boundary between Sections 7 and 18, a distance of 1,874.18 feet to the TRUE POINT OF BEGINNING;

THENCE South 00° 50' 31" West, a distance of 1,378.86 feet to a point on the South boundary of the Northwest Quarter of the Northeast Quarter of Section 18, said point lying South 86° 24' 11" West, a distance of 426.43 feet from the Northeast 1/16 Section corner;

THENCE South 86° 24' 11" West along said 1/16 Section line, a distance of 898.76 feet to a point on the Easterly right-of-way boundary of State Highway 61;

THENCE North 18° 33' 42" East along the highway right-of-way, a distance of 1,437.83 feet to a point of curvature;

THENCE Northerly along the right-of-way boundary and along a curve being concave to the East, having a radius of 3,745 feet, through a central angle of 05° 14' 54", a distance of 343.05 feet;

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Containing 23.04 acres, more or less

Subject to any existing easements or restrictions

# COUNTY Apache

## RANGE 26 East

## TOWNSHIP 12 North

